IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1589 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANALAL KALURAM

Versus

BAI HAVABIBI W/O ISMAIL DAVJI PATEL

Appearance:

1. Civil Revision Application No. 1589 of 1983

MR PV NANAVATI for Petitioner No. 1

MR RN SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2-4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the judgment and order dated 12th August, 1983 passed by the learned Assistant Judge, Surat in Regular Civil Appeal No. 26 of 1982, the petitioner-defendant has preferred the present Revision

Application.

The respondents [hereinafter referred to, "as the Plaintiffs"] claim to be the owners of the suit property being a room bearing House No. 52/59 in a building registered at No. 856 in Kathodara Gram Panchayat, Taluka Olpad, District-Surat. The suit property has been let to the petitioner-defendant since 1st January, 1957. The plaintiffs instituted Regular Civil Suit No. 13 of 1979 in the Court of Civil Judge [JD], Olpad. It was the case of the plaintiffs that the suit property belonged to their predecessor-one Ismail Davji Patel. On the death of the said Ismail Davji Patel, his widow and the children, the plaintiffs inherited the suit property; that the suit property was let to the defendant for residential purpose at a monthly rent of Rs. 15/=; that the defendant was in arrears of rent for more than six months; and that the defendant had acquired a suitable alternative residential accommodation. The learned trial Judge under his judgement and order dated 31st December, 1981 was pleased to hold that the defendant was in arrears of rent for a period of more than six months on the date of the suit, and that the defendant had acquired suitable residential accommodation. The learned Judge was, therefore, pleased to pass the decree for possession. Feeling aggrieved, the defendant preferred above referred Regular Civil Appeal No. 26 of 1982 before the learned District Judge, Surat. The appeal was heard by the learned Assistant Judge, Surat. The learned Judge under the impugned judgement and order dated 12th August, 1983 was pleased to reverse the finding of the trial court with respect to the arrears of rent. However, the Court below confirmed the finding of the learned trial Judge with respect to the acquisition of the suitable residential premises by the defendant and confirmed the decree passed by the trial Court. The Court below, therefore, confirmed the decree for possession passed by the learned trial Judge. Feeling aggrieved, the defendant has preferred the present Revision Application under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, 'the Rent Act'].

The only question raised before me is that whether the Courts below could have passed decree for possession on the ground that the defendant had acquired suitable residential premises. It is not disputed that the defendant has purchased the property in the vicinity of the suit premises. It is also not disputed that the defendant has been using the property acquired by him for the purpose of residence. However, Mr. Nanavati has

submitted that the suit-premises was let to the petitioner exclusively for the business purposes. Incidentally, the petitioner was also having his residence in the suit property. Hence, the suit property was predominantly let for the business purpose. The acquisition of residential property by the petitioner should not entail a decree for possession under Section 13 (1)(l) of the Rent Act. He has drawn my attention to the Rent Note Exh. 44, plaint and the issues framed by the Courts below. He has submitted that the rent-note Exh. 44 specifically stipulates that the suit property shall be used for the business alone. This necessarily means that the petitioner was given the suit property on rent for his business. If the petitioner were residing in the suit property, the same can be said to be incidental to his business. Mr. Nanavati has submitted that both the Courts below have failed to consider the real matter at issue. The court below has not applied its mind to the fact that the suit property was given to the petitioner for carrying on his business and that the petitioner was using the same predominantly for his business. He has submitted that, thus, the courts below have committed manifest error which has resulted into miscarriage of justice. This Court, therefore, should interfere with the concurrent finding recorded by the Courts below against the petitioner and ought to reverse the decree for possession passed by the Courts below. In support of his arguments, Mr. Nanavati has relied upon the judgment of this Court in the matter of Dolatrai Harjivan Bibodi & Anr. v. Dr. Kantilal Sukhlal Shah [18 GLR 848].

Mr. Shah has contested the Revision Application and has submitted that this Court ought not to interfere with the concurrent finding recorded by both the courts below. He too has relied upon the plaint and the evidence on record. He has submitted that even the plaint discloses that the suit property was let for the residential purpose. Mr. Shah has submitted that the petitioner has denied the rent note Exh. 44. He has submitted that the suit premises was being used for residence as well as for business, the purpose of residence being the predominant purpose. In support of his arguments, he has relied upon the judgments of this Court in the matters of Daulatram Hitumal Udhrani v.Rajendrabhai Jayantilal Tailor [1997 (2) GLH 463]; of Patel Valmik Himatlal & Ors. vs. Patel Mohanlal Muljibhai (Dead) through LRs. [1998 (2) GLH 736]; and in the matter of Legal Rep. & Heirs of Karsandas Gordhandas Parmar vs. Bahadursingh Madhursingh Dodia [1999 (1) GLH 543].

It is well-settled that the revisional jurisdiction of this Court under section 29 (2) of the Rent Act is limited one. This Court is not supposed to reappreciate the evidence and record its own finding, contrary to the concurrent finding recorded by both the courts below. It also is well-settled that the provisions of section 13 (1) (l) can be invoked in case of the premises let for residence. In case of composite use of the concerned premises - for residence as well as for business, the Court is required to decide whether such premises was being used predominantly for residence or for business. The intention can be culled from the evidence on record.

In the present case, if we rely upon the rent note Exh. 44, it must be held that the suit premises was given exclusively for business purpose. If at all it were used for residence also, such use would be incidental. However, in the present case, it appears that the rent note has never been acted upon. Though the rent note stipulates that the suit premises should be used exclusively for the purpose of business, indisputably, the suit premises was used for residence also since inception. Secondly, the rent note stipulates the rent of Rs. 20/= per month. However, admittedly, all along, the rent collected is that of Rs. 15/= per month. Hence, in my view, the rent note has not been acted upon by either of the parties. Neither the suit premises has ever been used in accordance with the rent note nor the rent has been paid or collected as stipulated in the said rent note. Considering the averments made in the plaint and the written statement, and the oral evidence given by the plaintiff as well as the petitioner, I am of the opinion that the suit premises was being used and was intended to be used for residence as well as for business. Keeping in view the evidence on record, the finding recorded by the Courts below with respect to predominant use of the suit premises cannot be said to be perverse or unreasonable as is submitted by Mr. Nanavati. The said finding does not call for interference.

No other contention is raised before me. The Revision Application is dismissed. The judgment and order dated 12th August, 1983 passed by the learned Assistant Judge, Surat in Regular Civil Appeal No. 26 of 1982 is confirmed. Rule is discharged with costs. Interim relief stands vacated. R&P be returned to the Court below.

[Ms. R.M Doshit, J.]

Prakash*